

JASON S. LEIDERMAN, SBN 203336  
[jay@criminal-lawyer.me](mailto:jay@criminal-lawyer.me)  
LAW OFFICES OF JAY LEIDERMAN  
5740 Ralston Street, Suite 300  
Ventura, California 93003  
Tel: 805-654-0200  
Fax: 805-654-0280

Attorney for Plaintiffs  
JAMES MCGIBNEY  
VIAVIEW, INC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual, and  
VIAVIEW, INC, a corporation,

**Plaintiffs,**

vs.  
THOMAS RETZLAFF, an individual,  
NEAL RAUHAUSER, an individual,  
LANE LIPTON, an individual, and  
DOES 1-5, individuals whose true names are now  
known.

### Defendants.

) Case No.: 5:14-cv-01059 BLF  
)  
)  
**DECLARATION OF JASON LEIDERMAN**  
**IN SUPPORT OF PLAINTIFFS'**  
**ADMINISTRATIVE MOTION TO EXTEND**  
**TIME TO RESPOND TO DEFENDANT**  
**THOMAS RETZLAFF'S MOTION TO**  
**STRIKE**  
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## **DECLARATION OF JASON S. LEIDERMAN**

1. I am an attorney duly licensed to practice law in the State of California. I represent Plaintiffs ViaView, Inc. and its CEO James McGibney.
  2. I make this declaration in support of Plaintiffs' Motion to Extend Time to Respond to Defendant Thomas Retzlaff's Motion to Strike. I have personal knowledge of the facts stated herein and could and would competently testify to them if required.

1           **A. Current Procedural Posture**

- 2       3. On September 14, 2014, Retzlaff filed a Motion for Extension of Time to File an Anti-SLAPP  
3           Motion to Strike. The statutory deadline for filing such a motion was September 12.  
4       4. Plaintiffs opposed the time extension, but the court granted it.  
5       5. On September 21, 2014, Retzlaff filed the instant Motion to Strike.  
6       6. The current deadline for Plaintiffs to respond is October 6, 2014, with Defendant's reply due by  
7           October 14, 2014.

8           **B. Reasons for Requested Extension**

- 9       7. From September 21, 2014 until September 26, 2014, my office was diligently preparing an  
10           opposition to Retzlaff's Motion to Strike.  
11       8. On Friday afternoon, September 26, 2014, while I was buckling my young son into his car seat, I  
12           suffered a freak bone break with slight displacement to my left 5th metacarpal. In other words, I  
13           broke my hand.  
14       9. I have attached to this declaration a letter from Centers for Family Health in Santa Paula, CA  
15           describing my injury.  
16       10. My hand was in a soft cast until September 30 while the swelling from the injury reduced.  
17       11. During this time I was also prescribed Vicodin for the pain.  
18       12. I attempted many times to resume work despite my injury, but the injury caused tremendous  
19           amounts of pain each time I tried to type on a keyboard. Due to the nature of this case and the  
20           nature of Mr. Retzlaff, I endured extreme pain trying to finish the opposition to his motion on  
21           time.  
22       13. Moreover, the prescription drugs slightly altered my mental state, disrupting my focus and  
23           productivity.  
24       14. On September 30, 2014, the soft cast was replaced with a hard cast. I have attached a note from  
25           Ventura County Medical Center Orthopaedic Clinic stating I will be "unable to use left hand for  
26           work."  
27       15. The hard cast makes typing with my left hand impossible.  
28

- 1       16. I have tried to use dictation software to work around the injury. However, I have not used the  
2           Dragon Dictation software before, and I have not been very successful.  
3       17. In short, while I continue to work on—and make progress on—the opposition to Retzlaff’s  
4           Motion to Strike, my broken hand has severely handicapped my ability to prepare an appropriate  
5           response within the time limits set by the court.

6           **C. Efforts to Obtain Stipulation**

- 7       18. In contrast to similar requests for extensions involving Defendant Lane Lipton, Plaintiffs have no  
8           reasonable expectation that Retzlaff would consider any stipulation to extend time as requested  
9           here. Rather, Plaintiffs expect Retzlaff to oppose any time extension.  
10      19. Additionally, I believe and allege that Mr. Retzlaff has made threats (including death threats)  
11           toward me.  
12      20. Moreover, Retzlaff even filed a Motion to Expedite the hearing on the instant Motion, which the  
13           court denied. (See Docket Nos. 61, 63.)  
14      21. As such, Plaintiffs have not made a serious effort to obtain a stipulation for a time extension  
15           from Retzlaff.

16           **D. Harm to Plaintiffs**

- 17      22. Should the court refuse the modest 4-day extension, the primary harm to Plaintiffs would be the  
18           negative effect on performance of counsel.  
19      23. Even working around it, my hand injury substantially impairs my ability to do the things I need  
20           to do to effectively represent my client:  
21      24. Typing is painful, and painfully slow.  
22      25. Working with paper documents is incredibly clumsy.  
23      26. My efforts to find a workaround have been relatively fruitless.  
24      27. Because the mechanical aspects of lawyering devour so much of my time, I have less time to  
25           spend marshaling facts, less time to spend thinking about legal doctrine, less time to edit and  
26           polish my work.  
27      28. As a result, should counsel be required to submit documents on October 6, those documents may  
28           not meet the high standards of our profession.

1           **E. Previous Time Modifications**

- 2       29. There have been two previous stipulated time extensions in this case.  
3       30. On July 11, 2014, Plaintiffs filed a stipulation joined by Defendant Lane Lipton's counsel to  
4           extend Plaintiffs' time to respond to Lipton's Motion to Dismiss and Motion to Strike. The court  
5           ordered as much on July 16.  
6       31. On August 5, 2014, Lipton filed a joint stipulation to extend time to file Lipton's reply. The  
7           court ordered as much on August 6.

8           **F. Effect on Time Modification on Case Schedule**

- 9       32. The hearing on the instant motion is currently set for January 22, 2015.  
10      33. The next hearing date in this case is currently set for November 20, 2014.  
11      34. As such, a 4-day extension to file Plaintiff's opposition will have no effect on any other case  
12           scheduling, with the notable exception that Retzlaff's time to reply would be extended until  
13           October 20, 2014.  
14      35. Because Mr. Retzlaff recorded the September 18, 2014 hearing, for which he appeared by  
15           telephone, then put an edited version of the audio on his blog, viaviewfiles.wordpress.com, I  
16           have reason to believe that he will improperly use my medical history, with edits and changes,  
17           for his own laughs.  
18      36. I have spoken with Clark Braunstein, counsel for Lane Lipton. He assures me that Bob Giolito,  
19           who appeared for Lipton at the September 18 hearing, was not responsible for the audio  
20           recording or for posting it on the Internet.  
21      37. Due to a deep mistrust of Mr. Retzlaff, I do not waive any medical privacy rights by submitting  
22           the attached medical documents for the limited purpose of supporting this motion. If the  
23           evidence is in doubt, I can obtain live witnesses. I do not want any of my medical history posted  
24           on Mr. Retzlaff's blog.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct. Executed on October 3, 2014, at Ventura, California.  
3  
4

By:\_\_\_\_/*s/ Jay Leiderman*\_\_\_\_\_

JASON S. LEIDERMAN

Counsel for Plaintiffs ViaView and James McGibney



## Centers for Family Health

 Community Memorial Health System

Santa Paula  
(805) 525-9595

Date: 9/27/14

*SOFT CAST  
NOTE*

To whom it may concern:

*JASON LEIDENMUTH*

This is to certify that \_\_\_\_\_ has been under my professional care.

\_\_\_\_\_ may return to work/school on \_\_\_\_\_.

\_\_\_\_\_ is unable to attend work/school from \_\_\_\_\_ to \_\_\_\_\_.

was seen in our office on 9/27/14.

\_\_\_\_\_ may return to work/school on \_\_\_\_\_ with no restrictions.

\_\_\_\_\_ may return to work/school on \_\_\_\_\_ with these restrictions:  
\_\_\_\_\_  
\_\_\_\_\_

Additional comments: PATIENT will have limited use of left hand and resume immobilization of hand/wrist in a soft cast on a crutch for up to estimated 6 weeks or more. He will be able to use likely 3 fingers of right hand for keyboarding/etc. due to significant fracture of D5-6 Metacarpal

Provider Signature: JES P W

Camarillo  
422-B Arneill Rd.  
Camarillo, CA 93010  
805/482-1282

Fillmore  
852 Ventura St.  
Fillmore, CA 93015  
805/524-2672

Oak View  
655 N. Ventura Ave.  
Oak View, CA 93022  
805/649-3750

Oxnard  
250 Citrus Grove Ln.  
Ste. 150  
Oxnard, CA 93036  
805/981-3770

Oxnard  
2921 S. Saviers Rd.  
Oxnard, CA 93033  
805/487-5585  
805/981-3770  
3641 West 5th St.  
Oxnard, CA 93035  
805/985-5505

Santa Paula  
242 E. Harvard Blvd.  
Suite C  
Santa Paula, CA 93060  
805/525-9595

Ventura  
4730 Telephone Rd.  
Ventura, CA 93003  
805/643-1871  
138 W. Main St., Ste. E  
Ventura, CA 93001  
805/667-2850

AMBULATORY CARE  
WORKSCHOOL LIMITATION STATUS FORMToday's Date: 9-30-14

To whom it may concern:

Patient, \_\_\_\_\_ was seen in our clinic today.

Patient's Status:

*Hard Cast  
Note.*

- Return to work/school with no restrictions starting: \_\_\_\_\_  
 Return to work/school starting: \_\_\_\_\_ with the following.  
 Restrictions (list): unable to use left hand for work
- Restrictions are permanent.
- Unable to return to work/school until: \_\_\_\_\_
- May lift/carry up to \_\_\_\_\_ pounds.
- No repetitive:

- Bending/Stooping.       Pushing/Pulling of \_\_\_\_\_ pounds or more.
- Squatting/Kneeling.       Keyboarding in excess of \_\_\_\_\_ minutes per hour.
- Carrying/Lifting of \_\_\_\_\_ pounds or more.

 No prolonged:

- Standing in excess of \_\_\_\_\_ hours.
- Sitting in excess of \_\_\_\_\_ hours.
- No at or above shoulder level reaching.
- No running/climbing/jumping.

Date of surgery: \_\_\_\_\_  
 Next appointment date: \_\_\_\_\_  
 Medications: \_\_\_\_\_  
 Other: \_\_\_\_\_  
 \_\_\_\_\_

Provider Signature: F. R. BENSON

RB#: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

AMBULATORY CARE WORKSCHOOL LIMITATION STATUS FORM

VENTURA COUNTY HEALTH CARE AGENCY

VCMC-803.40 (07/2013)

WHITE - Clinic Record

YELLOW - Patient

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